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6
7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**
9

10 LUIS LOPEZ,

11 Plaintiff,

12 v.

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14 NORTHWEST CASCADE, INC. and DOES 1
15 to 10,

16 Defendants.
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Case No.

**COMPLAINT FOR DAMAGES,
EQUITABLE AND/OR INJUNCTIVE
RELIEF**

VIOLATIONS OF THE FAIR LABOR
STANDARDS ACT ("FLSA");
UNPAID OVERTIME WAGES (LAB.
CODE SECTIONS 510, 1194);
UNPAID MEAL PERIOD WAGES
(I.W.C. WAGE ORDER NO. 4, LAB.
CODE SECTIONS 226.7, 512)
WAITING TIME PENALTIES (LAB.
CODE SECTIONS 201, 202, 203);
ITEMIZED WAGE STATEMENT
VIOLATIONS (LAB. CODE SECTION
226);
VIOLATIONS OF CALIFORNIA
LABOR CODE SECTION 1102.5;
VIOLATIONS OF THE CALIFORNIA
FAIR EMPLOYMENT & HOUSING
ACT, GOVERNMENT CODE SECTION
12940 ET SEQ;
VIOLATIONS OF LABOR CODE
SECTION 6310;
WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICIES

JURY TRIAL DEMANDED

1 Plaintiff LUIS LOPEZ complains and alleges as follows:

2 **PARTIES AND JURISDICTION**

3 1. Plaintiff LUIS LOPEZ (“Plaintiff”) is, and at all relevant times hereto, has been a
4 resident of the State of California.

5 2. Plaintiff is informed and believes and thereby alleges that Defendant
6 NORTHWEST CASCADE, INC. (“Defendant”, “Northwest” or “Honey Bucket”) is a company
7 that manufactures and distributes portable toilets and is authorized to do business in the State of
8 California, with its headquarters in Puyallup, Washington.

9 3. Defendant Northwest was at all applicable times an employer in this judicial
10 district, with distribution divisions in Concord and Richmond, California, within the territory of
11 the Northern District of California. Plaintiff was located at the Defendant’s “Honey Bucket”
12 division in Richmond.

13 4. This Court has jurisdiction and venue over this action in that Defendant Northwest
14 employed Plaintiff within this judicial district in the State of California, and Plaintiff is seeking
15 relief under federal law, including the Fair Labor Standards Act, 29 U.S.C. Sections 201 et seq.
16 Further, diversity of citizenship exists between the parties pursuant to 29 U.S.C. Section 1332.
17 This Court has supplemental jurisdiction over any state law claims, in that they arose from the
18 same common nucleus of operative facts, as the federal claims.

19 5. Plaintiff has exhausted all administrative remedies prior to filing this action,
20 including obtaining a Right to Sue Notice from the California Department of Fair Employment
21 and Housing.

22 6. Plaintiff is unaware of the names of Defendants identified herein as DOES 1-10,
23 inclusive, and therefore sues them by those fictitious names. Plaintiff is informed and believes
24 and thereon alleges, that Defendants sued herein as DOES are responsible in some manner for the
25 practices, acts, conduct, and occurrences alleged herein, as either actual perpetrators or co-
26 conspirators, aiders and abettors, officers, directors, and/or managing agents with the knowledge,
27 control, authority, direction, and/or ratification of the other Defendants, and each of them.

1 Plaintiff will seek leave of the Court to amend this Complaint to allege the true names and
2 capacities of the DOE Defendants, and the roles they played, once their identities and/or manner
3 of participation in the wrongful conduct herein described is ascertained.

4 7. Unless otherwise indicated as acting in individual capacity, Plaintiff is informed
5 and believes, and thereby alleges that each of the defendants herein were at all times relevant
6 hereto, the agents, representatives, servants and employees of the remaining defendants, and was
7 acting at least in part within the course and scope of such relationship, and that the wrongful acts
8 alleged herein were committed by such defendants, and each of them.

9 **FACTUAL BACKGROUND**

10 8. On June 11, 2015, Plaintiff was hired by Defendant as a commercial driver at its
11 “Honey Bucket” yard in Richmond, California. Plaintiff was not exempt from the hourly
12 overtime requirements under federal and state laws. His starting rate was approximately
13 \$9.00/hour. His duties included cleaning, repairing, pick up and delivery of portable toilets and
14 hand washer stations.

15 9. Plaintiff had 14 years of commercial driving experience with a class B license
16 before he was hired. He diligently and professionally performed his duties for Defendant and was
17 one of its most knowledgeable and capable drivers. Plaintiff received regular increases in his
18 hourly wage. In 2020, he was earning \$27.40/hour.

19 10. Since Plaintiff started his employment with Defendant, he was instructed to work,
20 and did work, 14-16 hours per day. Defendant was aware that Plaintiff worked in excess of his 8
21 hour shift, but, did not pay him full overtime. He was required to work 6 days per week, as well
22 as on week-ends.

23 11. Plaintiff regularly worked more than 40 hours in a workweek without receiving
24 proper overtime compensation. During these weeks, Honey Bucket not provide Plaintiff with
25 overtime compensation at a rate of one and one-half times her regular rate of pay for all hours
26 worked over 40 during those workweeks. Further, Plaintiff did not receive uninterrupted lunch or
27 rest breaks during his shifts.

1 12. Plaintiff noticed these wage discrepancies on his paychecks when Defendant
2 began using new payroll software. He reported these discrepancies to his supervisors who told
3 him they would “make it up” on the next paycheck. Defendant did not make full and complete
4 payment and Plaintiff continued to complain about his deficient wages to no avail.

5 13. Plaintiff was not required to keep timesheets. Defendant failed to maintain and
6 keep time records for Plaintiff. Defendant knew Plaintiff worked overtime without proper
7 compensation, and it willfully failed and refused to pay him overtime wages at the required rates.

8 14. Plaintiff was never offered a promotion throughout his employment with
9 Defendant. Further, his supervisors have antagonized and belittled him because of his race and
10 nationality. They made disparaging remarks about his accent and told him he did not receive a
11 promotion because he “spoke horrible English.” This remark is false as Plaintiff speaks English
12 fluently. Plaintiff has applied for multiple promotions without success and witnessed less
13 experienced Caucasian employees receive these opportunities. Defendant also treated Plaintiff
14 and other non-Caucasian workers differently by assigning them longer hours and heavier
15 workloads than Caucasian employees.

16 15. Further, when Plaintiff returned from a protected medical leave in 2019, his
17 supervisors threatened him with a heavier workload because they were upset that he took a
18 protected leave of absence.

19 16. Defendant had a business practice of cleaning its portable toilets on a designated
20 20’x 20’ concrete slab in the Richmond yard. Defendant sprayed the toilets with soap, bleach and
21 chemicals to separate the fecal matter. The slab was not level and contained only one drain such
22 that contaminated water from the toilets collected in stagnant pools. Plaintiff complained to
23 Defendant that workers were exposed to fecal matter and other environmental hazards when they
24 stood in 4 inches of contaminated water and attempted to clean the toilets before preparing them
25 for deliveries. His supervisors merely laughed and responded, “You’re getting wet . . . wear 2-3
26 pairs of socks!” Plaintiff explained Defendant’s unsanitary and hazardous methods in the
27 cleaning station was disallowed by the Occupational Health & Safety Administration (OSHA).
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1 He also requested protective gear such as rain coats, waterproof boots, and gloves for the
2 employees. His supervisors replied, “No, we don’t provide that. We’ve been doing it this way
3 for a couple of years.” Plaintiff made multiple complaints about Defendant’s unsafe working
4 conditions over the last year of his employment.

5 17. On December 15, 2020, Plaintiff injured himself on the job. He was replacing a
6 foot pump on a hand washing station at a construction site in San Francisco when he slipped on
7 excess water and fell directly upon his left knee. Plaintiff was unable to walk for several days or
8 place full weight upon his left leg. He reported his injury to his supervisor that same day. His
9 supervisor completed an accident report and told him to stay home. A few days later, Plaintiff
10 informed his supervisor that he would need additional time to recover.

11 18. Instead, on or about December 22, 2020, Defendants terminated Plaintiff and told
12 him that he had “abandoned” his job.

13 **FIRST CAUSE OF ACTION**

14 (Violations of the FLSA, 29 U.S.C. Section 201, et. al.)

15 19. Plaintiff realleges and incorporates by reference the previous paragraphs of this
16 Complaint as though fully set forth herein.

17 20. The Fair Labor Standards Act requires covered employers to pay non-exempt
18 employees no less than one-and-one half times their regular rate of pay for all hours worked in
19 excess of forty in a workweek. 29 U.S.C. section 207.

20 21. Plaintiff is a non-exempt covered employee. 29 U.S.C. section 203(e)(1).

21 22. Plaintiff has worked more than 40 hours per week for Defendant during the
22 applicable period.

23 23. Defendant has not properly compensated Plaintiff for his overtime hours as
24 required by the FLSA.

25 24. Defendant failed to make a good-faith effort to comply with the FLSA as it related
26 to the compensation of Plaintiff. Defendant knew Plaintiff worked overtime without proper
27 compensation, and it willfully failed and refused to pay Plaintiff his wages at the required
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1 overtime rates. 29 U.S.C. section 255. Defendant's willful failure and refusal to pay Plaintiff
2 wages for time worked violated the FLSA. 29 U.S.C. section 207.

3 25. By failing to record, report, and/or preserve records of hours worked by Plaintiff,
4 Defendant failed to make, keep and preserve records sufficient to determine Plaintiff's wages,
5 hours, and other conditions of employment, in violation of the FLSA, 29 U.S.C. section 255(a).

6 26. Further, the anti-retaliation of the Fair Labor Standards Act, 29 U.S.C. Section
7 215, prohibits an employer from retaliating or discriminating against an employee for making
8 internal complaints pertaining to compensation statutes, including failure to pay all wages,
9 overtime, and meal/rest breaks of an employee.

10 27. Defendant violated these provisions of the FLSA with regard to Plaintiff when it
11 (a) failed to pay Plaintiff his wages including overtime, and (b) terminated Plaintiff's employment
12 and took adverse actions, after internal complaints about the compensation during Plaintiff's
13 employment.

14 28. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered
15 damages in an amount to be proven at trial.

16 29. Defendant's conduct is properly characterized as "willful," and, as a result,
17 Defendants are liable for liquidated damages.

18 **SECOND CAUSE OF ACTION**

19 (Unpaid Overtime Wages – Labor Code sections 510, 1194)

20 30. Plaintiff realleges and incorporates the previous paragraphs of this Complaint as
21 though fully set forth herein.

22 31. The laws of the State of California require an employer, such as Defendants, to
23 pay overtime compensation to all employees, unless they are made exempt from the overtime pay
24 requirements by the Legislature or the Industrial Welfare Commission (IWC). Plaintiff has not
25 qualified for any exemption at any time relevant to this action. Therefore, Plaintiff has all times
26 relevant to this action been entitled to be paid overtime compensation for all overtime hours
27 worked.

FOURTH CAUSE OF ACTION

(Waiting Time Penalties – Labor Code sections 201, 202, 203)

38. Plaintiff incorporates by reference the previous paragraphs this Complaint as though fully set forth herein.

39. Labor Code sections 201 and 202 requires Defendant to pay its employees all wages due immediately upon discharge, or within 72 hours of quitting without notice. Labor Code section 203 provides that where an employer willfully fails to make such timely payment, the employer must, as a penalty, continue to pay the subject employees' wages until the back wages are paid in full or an action is commenced, up to a maximum of 30 days' wages.

40. Plaintiff has separated from employment with Defendant without being paid the overtime and meal period wages that are due to him within the time required by Labor Code sections 201 and 202. Defendant's failure to pay these wages has been and continues to be willful.

41. As a result of Defendant's conduct, Plaintiff is entitled to waiting time penalties in the amount of 30 days' wages under Labor Code section 203, together with interest thereon and reasonable attorney's fees and costs.

FIFTH CAUSE OF ACTION

(Itemized Wage Statement Violations – Labor Code section 226)

42. Plaintiff incorporates by reference the previous paragraphs of this Complaint as though fully set forth herein.

43. Under Labor Code section 226(a), Defendant has at all relevant times been required to provide Plaintiff with regular itemized written statements showing, among other things, total hours worked, all applicable hourly rates during the pay period, and the corresponding number of hours worked at each rate by the employee. Defendant knowingly and intentionally failed to provide timely, accurate itemized wage statements including this required information.

44. Under Labor Code section 226(e), an employee suffering injury as a result of a knowing and intentional failure by an employer to comply with section 226(a) is entitled to

1 recover the greater of all actual damages or \$50 for the initial pay period in which a violation
2 occurs and \$100 for each violation in a subsequent pay period, up to a maximum amount of
3 \$4,000.

4 45. As a direct and proximate result of Defendant's conduct, Plaintiff has been injured,
5 by among other things, not being paid all wages due, not knowing how many hours he worked
6 and at what rate(s), and being required to file this action to recover his wages and determine the
7 number of hours worked and wages due. Plaintiff is entitled to recover the damages or penalties
8 provided by Labor Code section 226(e), including interest thereon, and costs and reasonable
9 attorney's fees and costs.

10 **SIXTH CAUSE OF ACTION**

11 (Violation of California Labor Code Section 1102.5)

12 46. Plaintiff incorporates by reference the previous paragraphs of this Complaint as
13 though fully set forth herein

14 47. California Government Code §1102.5, *et. seq* provide that it is an unlawful
15 employment practice for an employer or any other person to retaliate against an employee for
16 opposing illegal conduct, or making workplace complaints of illegal conduct.

17 48. In acting above, Defendant violated Section 1102.5, when it terminated Plaintiff's
18 employment, and took adverse actions against Plaintiff, based upon his complaints of unpaid
19 wages as well as unsafe and hazardous working conditions in the "cleaning station" of the
20 Richmond yard.

21 49. As a direct and proximate result of Defendant's retaliatory conduct, Plaintiff has
22 suffered loss of employment, indignity, great humiliation and emotional distress manifesting in
23 physical symptoms.

24 50. Defendant's actions have caused and continue to cause Plaintiff substantial losses in
25 earnings, significant reputation and professional injury, loss of promotional opportunities and
26 other employment benefits, lost wages, attorneys' fees, future earnings and benefits, cost of suit,
27 humiliation, embarrassment and anguish, all to their damage in an amount according to proof.

51. The acts of Defendant as alleged herein, were intentional, outrageous, despicable, oppressive, fraudulent, and done with ill will and intent to injure Plaintiffs and to cause Plaintiff mental anguish, anxiety, and distress. Defendant's acts were done in conscious disregard of the risk of severe emotional harm to Plaintiff and with the intent to injure Plaintiff, constituting oppression, fraud, malice under California Civil Code §3294, entitling Plaintiff to punitive damages.

SEVENTH CAUSE OF ACTION

(Violations of the California Fair Employment & Housing Act –
Race and Disability Discrimination)

52. Plaintiff incorporates by reference the previous Paragraphs of this Complaint as though fully set forth herein.

53. The California Fair Employment and Housing Act ("FEHA") prohibits an employer from discriminating against an employee based upon race and/or disability.

54. In acting above, Defendant violated FEHA when it terminated Plaintiff's employment, took other adverse actions against Plaintiff.

55. As a direct and proximate result of Defendant's conduct, Plaintiff has suffered loss of employment opportunities, indignity, great humiliation and emotional distress manifesting in physical symptoms.

56. Defendant's actions have caused and continue to cause Plaintiff substantial losses in earnings, significant reputation and professional injury, loss of promotional opportunities and other employment benefits, lost wages, future earnings and benefits, cost of suit, humiliation, embarrassment and anguish, all to their damage in an amount according to proof.

57. The acts of the Defendant as alleged herein, were intentional, outrageous, despicable, oppressive, fraudulent, and done with ill will and intent to injure Plaintiff and to cause mental anguish, anxiety, and emotional distress. The acts of the employer Defendant were further committed by managing agents, officers, and/or directors of the Defendant, or ratified by the Defendant. The Defendant's acts were done in conscious disregard of the risk of severe

1 emotional harm to Plaintiff and with the intent to injure Plaintiff, constituting oppression, fraud,
2 malice under California Civil Code §3294, entitling Plaintiff to punitive damages.

3 **EIGHTH CAUSE OF ACTION**

4 (Violation of Labor Code section 6310)

5 58. Plaintiff incorporates herein by reference all the allegations contained in the previous
6 paragraphs of this complaint as fully set forth herein.

7 59. Labor Code section 6310 prohibits an employer from discriminating against an
8 employee who makes any oral or written complaint about unsafe working conditions.

9 60. Plaintiff complained to Defendant about unsafe working conditions in the Richmond
10 yard's cleaning station and requested protective gear for his co-workers and himself.
11 Specifically, he complained to Defendant that workers were exposed to fecal matter and other
12 hazards when they stood in 4 inches of contaminated water and attempted to clean the toilets
13 before preparing them for deliveries. Plaintiff further complained and reported that Defendant's
14 unsanitary and hazardous methods in the cleaning station was disallowed by OSHA.

15 61. Plaintiff's complaints and reports of hazardous working conditions were substantial
16 motivating reasons for Defendant's decision to discharge Plaintiff.

17 62. As a result of Defendant's conduct, Plaintiff has suffered harm. Plaintiff seeks all
18 available relief and damages, in an amount to be proven at trial.

19 **NINTH CAUSE OF ACTION**

20 (Wrongful Termination in Violation of Public Policies)

21 63. Plaintiff incorporates herein by reference the previous paragraphs of this complaint
22 as fully set forth herein.

23 64. It is the fundamental public policy of the State of California that employers, like
24 the Defendant, shall not retaliate against an employee (a) based upon his or her race or disability,
25 pursuant to Government Code §12940 et. seq.; and for reporting complaints about (b)
26 compensation structures, including the payment of wages and bonuses; and (c) unsafe working
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1 conditions. These fundamental public policies are embodied in the California Labor Code §§ 96
2 et. seq., 98 et. seq., 200 et. seq., 1102.5, 6310; and other federal and state laws and regulations.

3 All of these policies were fundamental at the time of the adverse employment actions.
4 The violation of each of these policies was a substantial motivating reason for Plaintiff's
5 discharge. In acting as alleged herein, Defendant wrongfully terminated Plaintiff in violation of
6 these statutes, regulations, and public policies.

7 As a direct and legal result of Defendant's conduct, Plaintiff has suffered loss of
8 employment, indignity, great humiliation and emotional distress manifesting in physical
9 symptoms.

10 Defendant's actions have caused and continue to cause Plaintiff substantial losses in
11 earnings, significant reputational and professional injury, loss of promotional opportunities and
12 other employment benefits, lost wages, attorneys' fees, medical expenses, future earnings and
13 benefits, cost of suit, humiliation, embarrassment and anguish, all to his damage in an amount
14 according to proof.

15 The acts of Defendant as alleged herein, were intentional, outrageous, despicable,
16 oppressive, fraudulent, and done with ill will and intent to injure Plaintiff and to cause Plaintiff
17 mental anguish, anxiety, and distress. The acts of the Defendant were further committed by
18 managing agents, officers, or directors of Defendant, or ratified by it at a corporate level.
19 Defendant's acts were done in conscious disregard of the risk of severe emotional harm to
20 Plaintiff and with the intent to injure Plaintiff, constituting oppression, fraud, malice under
21 California Civil Code § 3294, entitling Plaintiff to punitive damages.

22 **PRAYER FOR RELIEF**

23 Wherefore, Plaintiff prays for judgment against Defendants, and each of them as follows:

- 24 1. For general damages in an amount according to proof;
- 25 2. For special damages in an amount according to proof;
- 26 3. For prejudgment interest in an amount according to proof;
- 27 4. For equitable, declaratory, and/or injunctive relief including reinstatement;
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5. For statutory penalties and liquidated damages;
6. For reasonable attorney's fees and cost of suit therein pursuant to applicable provisions of law, including Labor Code sections 218.5, 226, 1102.5, 1194, and 2699, and 29 U.S.C. section 216(b), and Code of Civil Procedure section 1021.5;
7. For such other and further relief as the court may deem proper; and,
8. For punitive or exemplary damages;
9. **Plaintiff demands a trial by jury.**

Dated: August 10, 2021

BROWN | POORE LLP

By: //s// Scott A. Brown

Scott A. Brown
Attorneys for Plaintiff